IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.998 OF 2005

IN

EXECUTION APPLICATION NO.380 OF 2004

IN

CASE NO.CC-IV/101 OF 1996

Shivshakti Industrial Premises
Co-op. Society Ltd. ...Disputants

Versus

Mr.Mohan K.Bhavnani ...Opponents

And

Commissioner for Taking Accounts,
High Court, Mumbai & Anr. ...Respondents

.....

Ms.Shakuntala Joshi for Applicants/Disputants.

Ms.Swati Deshpande i/b M.S.Bodhanwala for secured creditors.

.....

CORAM: A.M.KHANWILKAR, J.

SEPTEMBER 20, 2005.

P.C.

1. Heard Counsel for the parties.

2. By this Chamber Summons, the Applicants/disputant Society prays that the order passed by the Commissioner for Taking Accounts dated 27th June 2005 be set-aside and instead, proclamation for sale be issued in respect of Gala No.58 in Shivshakti Industrial Premises Co-op. Society Ltd., M.V.Road, Opp.Mittal Estate, Andheri, Mumbai - 400 059.

3. According to the Applicants/disputants, award has been passed in favour of the disputant society on 12th June 1998 which pertains to same property being gala No.58 referred to above. The said property has now been attached under order dated 1st December 2004.

4. However, in my opinion, no fault can be found with the view taken by the Commissioner for Taking Accounts in rejecting the Application preferred by the disputants. This is so, because Respondent No.2 claims to be a secured creditor in respect of the opponents, who in turn have mortgaged, amongst other properties, gala No.58,

which is subject matter of the present Application.

5. In proceedings for recovery before the Debts Recovery Tribunal, decree has been passed in favour of Respondent No.2 on 18th October 2002. On the basis of the said decree, recovery certificate has been issued on 26th November 2002 and thereafter, gala No.58 has been attached under the orders of the Recovery Officer dated 27th January 2004. The said order is placed on record. In other words, the attachment of gala No.58 has been levied in proceedings before the Debts Recovery Tribunal in earlier point of time. That attachment order is still operating. On the basis of that attachment order, the Debts Recovery Tribunal in fact, had attempted to sell the property but no offer was received. Merely because attachment order has now been passed in respect of same gala on 1st December 2004 without reference to the pending proceedings between Respondent No.2 and opponents before the Debts Recovery Tribunal, it is not possible to accept the claim of the Applicants to issue proclamation for sale in respect of the same property so as to recover outstanding dues

arising under the award passed by the Cooperative Court in its favour on 12th June 1998.

6. I find substance in the argument canvassed on behalf of the Respondent No.2 that if at all, the proper remedy for the disputants/Applicants will be to first get the order of attachment levied by the Recovery Officer set aside by filing appeal under Section 30 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. In absence thereof, no further proceedings can be resorted to in view of bar under Section 34 of the Act of 1993.

7. Viewed in this perspective, no fault can be found with the order of the Commissioner, which is impugned in this Chamber Summons. Hence, Chamber Summons dismissed.

8. Issuance of certified copy is expedited.

A.M.KHANWILKAR, J.